

**Board of Chiropractic Examiners
Proposed Regulations
Title 16, Division 4, California Code of Regulations**

§390. Issuance of Citations and Fines.

(a) The Executive Officer of the board or his/ or her designee may issue a citation containing an order to pay a fine between \$100 and \$5,000 and with an order of abatement against a licensee for any violation of the Act or the California Code of Regulations or any laws governing the practice of chiropractors which would be grounds for discipline. A citation may be issued without the assessment of a fine, when determined by the Executive Officer or his or her designee.

(b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the law ~~and/or~~ regulation alleged to have been violated.

(c) The citation shall be served upon the cited person either ~~individual~~ personally or by certified United States mail.

NOTE: Authority cited: Sections 125.9, 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.1. Criteria to Be Considered.

In the issuance of any citation, the following factors shall be considered:

- (a) Nature and severity of the violation.
- (b) Length of time that has passed since the date of the violation.
- (c) Consequences of the violation, including potential or actual patient harm.
- (d) History of previous violations of the same or similar nature.
- (e) Evidence that the violation was willful.
- (f) Gravity of the violation.
- (g) The extent to which the cited person has remediated any knowledge and/or skill deficiencies which could have injured a patient.

NOTE: Authority cited: Sections 125.9, 1000-4(b), and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

~~§390.2. Violation Codes and Penalty.~~

~~(a) The issuance of a citation can be for any of the following violations:~~

~~Title 16 California Code of Regulations Section 302(a)(7)~~
~~Title 16 California Code of Regulations Section 303~~
~~Title 16 California Code of Regulations Section 308~~
~~Title 16 California Code of Regulations Section 310~~
~~Title 16 California Code of Regulations Section 310.2~~
~~Title 16 California Code of Regulations Section 311~~
~~Title 16 California Code of Regulations Section 312~~
~~Title 16 California Code of Regulations Section 312.1~~
~~Title 16 California Code of Regulations Section 313~~
~~Title 16 California Code of Regulations Section 317(d)~~
~~Title 16 California Code of Regulations Section 317(f)~~
~~Title 16 California Code of Regulations Section 317(p)~~
~~Title 16 California Code of Regulations Section 317(r)~~
~~Title 16 California Code of Regulations Section 317(u)~~
~~Title 16 California Code of Regulations Section 317.1~~
~~Title 16 California Code of Regulations Section 318~~
~~Title 16 California Code of Regulations Section 319~~
~~Title 16 California Code of Regulations Section 355(b)~~
~~Title 16 California Code of Regulations Section 367.5(e)~~
~~Title 16 California Code of Regulations Section 367.7~~
~~Chiropractic Initiative Act Section 15~~
~~Business and Professions Code Section 725~~
~~Business and Professions Code Section 1054~~
~~Business and Professions Code Section 1055~~
~~Business and Professions Code Section 17500~~
~~Health and Safety Code Section 123110~~

~~(b) In his/her discretion, the executive director or designee may issue an order of abatement for the first violation of any provision set forth in subsection (a).~~

~~(c) If a licensee has previously been issued two citations for violation of any of the code sections in subsection (a), the third violation will result in filing an accusation.~~

~~NOTE: Authority cited: Sections 1000 4(b) and 1000 10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000 4(b) and 1000 10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.~~

~~HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39). 2. Amendment of subsection (a) filed 10-16-2003; operative 11-15-2003 (Register 2003, No. 42).~~

§390.3. Citations for Unlicensed Practice.

The Executive Officer or his/her designee may issue a citation against any unlicensed person who is acting in the capacity of a licensee under the

jurisdiction of the board and who is not otherwise exempt from licensure. Each citation may contain an order of abatement fixing a reasonable period of time for an abatement and an order to pay a fine not to exceed \$5,000 for each violation. Any sanction authorized for activity under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 1000-4(b), and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.4. Contested Citations.

(a) The citation shall inform the licensee that if he/she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board within 30 calendar days of the date of issuance of the citation. Hearings shall be held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing provided for in subdivision (a) of this section, the cited person may, within 14 calendar days after service of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer or his/her designee shall, within 30 calendar days from receipt of the written request, hold an informal conference with the person cited and/or his/her legal counsel or authorized representative.

(d) The Executive Officer or his/her designee may affirm, modify or dismiss the citation, at the conclusion of the informal conference. A written decision stating the reasons for the decision shall be mailed to the cited person and his/her legal counsel, if any, within 14 calendar days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued.

(e) If the citation is dismissed, the request for a hearing shall be deemed withdrawn. If the citation is affirmed or modified, the cited person may, in his/her discretion, withdraw the request for a hearing or proceed with the administrative hearing process.

NOTE: Authority cited: Sections 125.9, 1000-4(b), and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.5. Compliance with Citation/Order of Abatement.

(a) Orders of abatement may be extended for good cause. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/her control after the exercise of reasonable diligence, the person cited may request an extension of time from the executive officer or his/her designee in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When a citation or order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation within the time allowed or pay the fine that is imposed, if one was, shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay a fine that is imposed is unprofessional conduct and may result in disciplinary action being taken by the board.

NOTE: Authority cited: Sections 125.9, 1000-4(b), and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.6. Notification to Other Boards and Agencies.

The issuance and disposition of a citation shall be reported to other chiropractic boards and other regulatory agencies. A licensee's compliance with an order of abatement or payment of a fine based on the finding of a violation may only be disclosed to the public as satisfactory resolution of the matter.

NOTE: Authority cited: Sections 125.9, 1000-4(b), and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).